

\$~18

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5168/2018 & CM Nos.20075-76/2018

YOGESH KUMAR & ORS ..... Petitioners

Through: Dr.Ashwani Bhardwaj, Advocate

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr.Chiranjeev Kumar & Mr.Mukesh

Sachdeva, Advocates for R-1, 4 & 5

with Mr.Apar Chopra, G.P.

Mr.Rajeev Sharma, Ms.Radhalakshmi

R. & Mr.T.Rajat Krishna, Advocates

for R-2 & R-3

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

% **15.05.2018**

1. The petitioners herein had approached the Tribunal by filing OA no.2479/2015 praying *inter alia* for quashing the order dated 08.09.2014, passed by the Ministry of Information & Broadcasting, Government of India holding that the benefits under the MACPs are allowed in the Grade Pay hierarchy and any upgradation availed during the career of the employees working in a certain category in Prasar Bharti would be counted against three upgradations permissible under the MACPs.

2. Vide order dated 01.12.2017, the Tribunal disposed of the OA with the consent of the parties by holding that the prayer made by the petitioners was squarely covered by an earlier decision pronounced on 31.03.2016 in OA No.1118/2015, entitled '*Smt.Syamali Biswas Vs. UOI & Ors.*'.

3. In the order dated 01.12.2017, the learned Tribunal has noted that the respondents/UOI had assailed the judgment dated 31.03.2016 passed in OA No.1118/2015 by filing a writ petition in the High Court [W.P.(C) No.2034/2017] on which an interim order was passed on 11.04.2017, thereby staying the operation of the impugned order. Thereafter, the OA filed by the petitioner was disposed of by the Tribunal in terms of the judgment dated 31.03.2016 passed in OA No.1118/2015, with the rider that in view of the judgments of the Supreme Court in State of Punjab & Others Vs. Rafiq Masih (White Washer) etc. 2014 (8) SCALE 613, the respondents were restrained from making any recovery from the applicant before it.

4. Dr.Ashwani Bhardwaj, learned counsel for the petitioners states that it is an undisputed position that W.P.(C) No.2034/2017 is pending adjudication and is listed on 12.11.2018. In the meantime, without awaiting a decision in the same petition, the respondents No.1, 4 and 5 have arbitrarily proceeded to pass an order dated 31.01.2018, directing the respondent No.2/Prasar Bharti and the respondent No.3/All India Radio to take action to recover the wrongful/excess payments made to Government servants in terms of the DOP&T OM dated 02.03.2016.

5. From the above, it is apparent that the petitioners are not aggrieved by the judgment dated 1.12.2017. The grievance of the petitioners is that after the Tribunal had disposed of OA No.2479/2015, the action taken by the respondents No.1, 4 and 5 directing respondents No.2 and 3 to make recoveries from the salaries of the petitioners is unjustified. If that is so, then in our opinion, the petitioners are barking the wrong tree. They ought to have approached the Tribunal directly with the grievance that the respondents are overlooking its order. Instead, the petitioners have filed the present misconceived petition.

6. At this stage, learned counsel for the petitioners seeks leave to withdraw the present petition while reserving the right of the petitioners to approach the Tribunal by filing a contempt petition. He however states that protection may be granted to the petitioners in the interregnum, restraining the respondents from making recoveries from the salary of the petitioners and/or re-fixing their pay and allowances, contrary to the directions issued in the order dated 01.12.2017 which has only reiterated the observations made by the Tribunal in the earlier order passed in OA No.1118/2015.

7. The present petition is disposed of with liberty granted to the petitioners to approach the Tribunal against the action taken by the respondents in terms of the letter dated 31.01.2018. If the petitioners file an appropriate petition within three weeks, then the same shall be considered and orders may be passed thereon by the Tribunal in accordance with law. Till the said petition is taken up by the Tribunal and appropriate orders passed, the respondents are restrained from taking any coercive steps against the petitioners, contrary to the spirit of the order dated 1.12.2017 passed in OA No.2479/2015.

8. The petition is disposed of along with the pending applications.

**HIMA KOHLI, J.**

**PRATIBHA RANI, J.**

**MAY 15, 2018**

*'hkaur/pg'*